

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION AT MEMPHIS

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SMITH & NEPHEW INC.,	)	
	)	
Plaintiff,	)	Case No. <u>12-2476</u>
	)	
vs.	)	Original State Case Docketed as CT-
	)	002676-12 Shelby County, TN
NORTHWEST ORTHO PLUS, INC.; TOM	)	Circuit Court, Div. I
CORBETT; BARRETT DOWNS; BRIAN	)	
KYM; JIM WORKLAND; MICHAEL JAY	)	
BARR; A1A, INC.; and AVENUE	)	
MEDICAL PRODUCTS, LLC	)	
	)	
Defendants.	)	

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**NOTICE OF REMOVAL**

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TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants A1A, Inc. (“A1A”) and Avenue Medical Products, LLC (“Avenue”) give notice that the civil action styled *Smith & Nephew Inc. v. Northwest Ortho Plus, Inc. et al.* in the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis, bearing No. CT – 002676-12, is hereby removed to this Honorable Court. Removal is warranted under 28 U.S.C. § 1441(b) because this is a diversity action over which this Court has original jurisdiction under 28 U.S.C. § 1332.

In support of removal, AIA and Avenue represent to the Court as follows:

1. This action was originally filed by the Plaintiff in the Circuit Court of Shelby County, Tennessee on June 19, 2012.

2. As is more fully set forth below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because A1A and Avenue have satisfied the procedural requirements for removal, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332.

**I. A1A AND AVENUE HAVE SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL.**

3. The Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis is located within the Western District of Tennessee, Western Division. *See* 28 U.S.C. § 1441(a).

4. Neither A1A nor Avenue has yet been served with the Summons and Complaint. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1446(a), copies of all documents and exhibits filed with respect to this matter in the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis, which documents include Plaintiff's Complaint, are attached collectively hereto as **Exhibit 1.**

6. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiff and a copy is being filed with the Clerk of the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis.

7. Defendant Tom Corbett consents to removal.

**II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441**

8. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441 because this is a civil action between citizens of different States and in which the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest.

**A. Complete Diversity of Citizenship.**

9. Complete diversity exists between Plaintiff and all Defendants to the present action.

10. As indicated by the attached Complaint and upon information and belief, Plaintiff is a Delaware corporation with its principal place of business in Memphis, Tennessee

11. A1A is a corporation formed in the State of Washington with its principal place of business located at 2710 1<sup>st</sup> Avenue South, Seattle, Washington 98134. A1A's registered agent is listed as Scott C. Henderson, 1201 3<sup>rd</sup> Avenue, Ste. 300, Seattle, WA 98101. Therefore, under 28 U.S.C. § 1332(c), A1A is a citizen of the State of Washington. A1A is not a citizen of the State of Tennessee.

12. Avenue is a limited liability company formed in the State of Washington with its principal place of business located at 2710 1<sup>st</sup> Avenue South, Seattle, Washington 98134. Avenue's registered agent is listed as Scott C. Henderson, 1201 3<sup>rd</sup> Avenue, Ste. 300, Seattle, WA 98101.

13. None of Avenue's members resides in the State of Tennessee, was formed in the State of Tennessee, nor has its principal place of business in the State of Tennessee. *See Delay v. Rosenthal Collins Grp., LLC*, 585 F.3d 1003, 1005 (6th Cir. 2009) (citing *Homfeld II, L.L.C. v.*

*Comair Holdings, Inc.*, 53 Fed. App'x 731, 732 (6th Cir. 2002)) (“[W]e held in an unpublished decision that a limited liability company has the citizenship of each of its members. And we so hold today.”); *Fields-Bey v. Lipford*, No. 11-2686-STA-dkv, 2012 WL 1023049, at \*3 (W.D. Tenn. Mar. 26, 2012) (“For diversity purposes, a limited liability company is treated as a partnership rather than a corporation. Thus, a limited liability company is a citizen of every state in which one or more of its members resides.”). Avenue is not a citizen of the State of Tennessee.

14. As indicated by the attached Complaint and upon information and belief, Defendant Northwest Ortho Plus, Inc. (“Northwest Ortho”) is a corporation formed in the State of Washington with its principal place of business located at 6806 South Ben Bur Street, Spokane, WA 99223. Upon information and belief, Northwest Ortho’s registered agent is listed as Tom Corbett, 6806 South Ben Bur Street, Spokane, WA 99223. Therefore, under 28 U.S.C. § 1332(c), Northwest Ortho is a citizen of the State of Washington.

15. As indicated by the attached Complaint and upon information and belief, Defendant Tom Corbett is an adult resident citizen of the State of Washington and may be served at 6806 South Ben Bur Street, Spokane, WA 99223.

16. As indicated by the attached Complaint and upon information and belief, Defendant Barrett Downs is an adult resident citizen of the State of Washington and may be served at 6806 South Ben Bur Street, Spokane, WA 99223.

17. As indicated by the attached Complaint and upon information and belief, Defendant Jim Workland is an adult resident citizen of the State of Washington and may be served at 1226 E. Christmas Tree Lane, Spokane, WA 99203.

18. As indicated by the attached Complaint and upon information and belief, Defendant Brian Kym is an adult resident citizen of the State of Idaho and may be served at 4073 Fairway Drive, Lewiston, ID 83501.

19. As indicated by the attached Complaint and upon information and belief, Defendant Michael Jay Barr is an adult resident citizen of the State of Washington and may be served at 11825 N. Fairwood Dr., Spokane, Washington 99218.

**B. Amount in Controversy**

20. The amount in controversy in this action, exclusive of interests and costs, exceeds seventy-five thousand dollars (\$75,000.00).

21. Plaintiff claims to have suffered damages “against A1A and Avenue, jointly and severally, in an amount to be determined at trial but not less than \$56,000,000.00.” (Compl. ¶ 41.) Thus, Plaintiff’s claims expressly exceed the jurisdictional threshold of \$75,000.00.

WHEREFORE, Defendants A1A, Inc. and Avenue Medical Products, LLC respectfully remove this action from the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis, bearing No. CT – 002676-12, to this Honorable Court.

Respectfully Submitted,

BUTLER, SNOW, O’MARA, STEVENS & CANNADA,  
PLLC

By: /s/ Charles F. Morrow

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a true and correct copy of the foregoing document has been served upon the following parties and counsel of record via hand-delivery and U.S. Mail, postage prepaid, this 20th day of June, 2012.

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*Attorneys for Plaintiff*

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Jim Workland  
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/s/ Charles F. Morrow